

The Impact of Student GPAs and a Pass/Fail Option on Clinical Negotiation Course Performance

CHARLES B. CRAVER*

I. INTRODUCTION

Practicing attorneys negotiate constantly. They interact on a daily basis with clients, colleagues, government representatives, and private sector counterparts. Litigators resolve the vast majority of legal disputes through negotiated settlements rather than through costly and unpredictable arbitral and judicial determinations. Transactional representatives formulate the basic terms of all business arrangements through bargaining interactions. It thus should be apparent that the possession of negotiation skills should enhance substantially one's ability to practice law.

During the early 1960s, innovative law professors began to recognize that simulated exercises could be employed in clinical courses to teach students about the negotiation process. James J. White at the University of Michigan¹ and Cornelius J. Peck and Robert L. Fletcher at the University of Washington² developed simulation models designed to improve the bargaining competence of future practitioners. During the 1960s and 1970s, few law schools taught Legal Negotiating courses. Over the past two decades, however, most law schools have added clinical negotiating courses to their curricula.

During the past thirteen years, I have taught a Legal Negotiating course at George Washington University based on the White-Peck-Fletcher models. I frequently have wondered whether the fundamental skills developed in that legal skills class are related to those developed in traditional law school courses. Would students who perform well in other law school courses

* Leroy S. Merrifield Research Professor of Law, George Washington University; University of Michigan, J.D., 1971; Cornell University School of Industrial and Labor Relations, M. Ind. & Lab. Rels., 1967; Cornell University, B.S., 1967. The author would like to thank David W. Barnes of the University of Denver for his valuable statistical assistance.

¹ See generally James J. White, *The Lawyer as a Negotiator: An Adventure in Understanding and Teaching the Art of Negotiation*, 19 J. LEGAL EDUC. 337 (1967); HARRY T. EDWARDS & JAMES J. WHITE, PROBLEMS, READINGS, AND MATERIALS ON THE LAWYER AS A NEGOTIATOR (1977).

² See generally Cornelius J. Peck & Robert L. Fletcher, *A Course on the Subject of Negotiation*, 21 J. LEGAL EDUC. 196 (1968); CORNELIUS J. PECK, CASES AND MATERIALS ON NEGOTIATION (1980).

achieve better results in my Legal Negotiating class than colleagues who do not perform as well in traditional courses?

Students who maintain consistently high grade point averages (GPAs) usually are considered—by both academics and practicing attorneys deciding which recent graduates to hire as associates—intelligent, industrious, organized, and articulate. Would these personal attributes carry over to skills courses and positively influence student performance on negotiation class exercises or course papers? If so, there should be a statistically significant positive correlation between student GPAs and Legal Negotiating class achievement.

At George Washington University, students who take my Legal Negotiating class may elect a conventional grade or a pass/fail alternative. In this simulation course, the students engage in a series of negotiation exercises, with their bargaining results determining two-thirds of their final grades. The other one-third is based on the scores they earn on class papers. In conventional law school courses, student grades are only indirectly affected by the performance of other students—assuming use of conventional grading curves. In my Legal Negotiating class, however, students' grades are directly affected by their bargaining interactions with classmates. They are assigned partners for some exercises and must interact directly with opponents on all exercises. Personal conflicts with partners or adversaries may adversely affect their performance on particular exercises, with those difficulties being reflected in their final course grades.

I recently examined the correlation between class performance and the impact of a pass/fail option.³ I found a statistically significant difference between graded and pass/fail students with respect to negotiation exercise performance, with graded students achieving substantially higher average results than their pass/fail cohorts.⁴ Although I also found that graded students achieved slightly higher paper scores than their pass/fail cohorts, the mean differences were of only marginal statistical significance.⁵

As I evaluated the relationship, if any, between overall student GPAs and Legal Negotiating course performance, I thought it might be interesting to ascertain whether there is any statistically significant correlation between

³ See generally Charles B. Craver, *The Impact of a Pass/Fail Option on Negotiation Course Performance*, 48 J. LEGAL EDUC. 176 (1998).

⁴ See *id.* at 182 tbl.1. On the five class exercises that influenced final course grades, graded students attained scores 5.17 points higher on average than their pass/fail colleagues. See *id.* at 182–83. This difference would result in grade differentials on a plus/minus letter scale of one to two gradations. See *id.*

⁵ See *id.* The 1.18 average difference would influence only the final grades of students with overall scores just below the cutoffs for next higher gradations. See *id.* at 184 tbl.2.

student GPAs and the decision of class participants to take the class for a regular grade or on a pass/fail basis. Would decisions to take the Legal Negotiating class on a pass/fail basis be unrelated to student GPAs, or would a greater number of higher or lower GPA students select the credit/no-credit option?

This Article first will explore the possible relationship between student GPAs and performance on Legal Negotiating exercises and course papers. I will endeavor to determine whether the skills that contribute to successful performance on traditional law school testing mechanisms also influence performance on negotiation exercises and on course papers. The Article then will evaluate any possible relationship between student GPAs and student decisions whether to take my Legal Negotiating class for a conventional grade or on a pass/fail basis.

II. LEGAL NEGOTIATING COURSE METHODOLOGY

The initial Legal Negotiating class is devoted to an explanation of the course format and the evaluation process. I tell the students that they will explore the negotiation process and the factors that influence bargaining encounters. They will engage in a series of negotiation exercises. Although the first two or three simulations will be for practice purposes and will not affect course grades, the next five exercises will be used to determine two-thirds of class grades.⁶ Each negotiation exercise is structured in a “duplicate bridge” format. Every participant receives identical “General Information” describing the relevant factual circumstances and the specific issues that must be resolved through the negotiation process. All of the individuals on the same side of an exercise receive the same “Confidential Information” apprising them of special information possessed by their client, explaining their client’s bargaining objectives, and setting forth the manner in which they will be evaluated if they achieve agreements or fail to generate accords. They usually are assigned one or two zero-sum problems that concern only the amount of money one side will pay to the other, because many litigation and nonlitigation interactions are limited to these types of “distributive” situations that involve head-to-head competition.⁷ They also are assigned several non-zero-sum exercises that permit cooperative negotiating parties to increase their respective satisfaction levels simultaneously, through efficient

⁶ Students are required to participate in all five graded exercises unless they provide good cause for nonparticipation in particular exercises.

⁷ See generally Gerald B. Wetlaufer, *The Limits of Integrative Bargaining*, 85 GEO. L.J. 369 (1996).

“integrative” bargaining that is designed to maximize the joint return achieved by the participants.

Class members negotiate on a one-against-one or a two-against-two basis. On some occasions, students are assigned partners to assist them with complex issues and to demonstrate the difficulties negotiators may encounter with respect to individuals on their own side. The students learn that in practice opposing counsel often achieve tentative accords with minimal difficulty and thereafter encounter problems when they try to convince their respective clients to accept the reasonable terms negotiated. For each exercise, participants randomly are assigned different opponents and, when relevant, different partners. This is done to maximize the number of individuals with whom they will interact throughout the term⁸ and to prevent one student from having an excessive impact on the course grade of another student.

I evaluate the performances of class members on a curve, based on each side's results measured against the scoring information contained in that side's Confidential Information. The students are then ranked from high to low and are assigned “placement” points for grading purposes. For example, if ten groups of students negotiate on a two-against-two basis, the most successful team on Side A receives ten placement points, the second highest receives nine placement points, and so forth. A similar ranking process is carried out with respect to the individuals on Side B. If twenty pairs of students interact on a one-against-one basis, the highest student on Side A still receives ten placement points, but the second highest student receives 9.5 placement points, the third highest participant receives nine placement points, and so forth. This half-step scale is used to provide the two-against-two and the one-against-one exercises with equal weight.

Each class member is also required to prepare a ten to fifteen page paper exploring the negotiation process. The writers are instructed to analyze their bargaining interactions based on the concepts covered throughout the term. Some papers focus on the different negotiation stages, the efficacy of diverse bargaining techniques, the impact of race, gender,⁹ or similar factors on bargaining encounters, the use of deceptive tactics,¹⁰ the importance of verbal and nonverbal communication, and other similar topics. Students are

⁸ During the practice exercises that do not affect course grades, students negotiate against the same opponents to apprise them of the way in which current bargaining behavior may influence future interactions with the same persons.

⁹ See generally Charles B. Craver & David W. Barnes, *Gender, Risk Taking, and Negotiation Performance*, 5 MICH. J. GENDER & L. 299 (1999).

¹⁰ See generally Charles B. Craver, *Negotiation Ethics: How to Be Deceptive Without Being Dishonest/How to Be Assertive Without Being Offensive*, 38 S. TEX. L. REV. 713 (1997).

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informed that acceptable papers—worthy of a “C” or better—must be prepared if they are to obtain course credit. Unacceptable papers are returned to students for improvement. This paper requirement affects both graded and pass/fail students and must be satisfied no matter how successful students have been with respect to negotiation exercise achievement.

Students are told that if they participate in the assigned negotiation exercises and prepare acceptable papers, they are guaranteed grades of “C/C+” or better, and individuals taking the class on a pass/fail basis are guaranteed “Pass” grades. They also are informed that the law school evaluation curve precludes the awarding of grades of “A-” and above to more than twenty-five percent of class members.¹¹

During the first class session, I emphasize several factors which students should consider carefully when they decide whether to take the class for a grade or on a pass/fail basis. Class participants will engage in openly competitive exercises that will influence their final grades. Risk averse individuals might find this experience discomfiting and prefer to diminish the competitive aspect by opting for pass/fail evaluations. I remind them that their negotiation results will be affected by both assigned partners and opponents. Individuals concerned about this aspect of the course similarly are encouraged to take the class on a pass/fail basis. I tell students that if they are equivocating with respect to this issue, they probably should elect the pass/fail option to minimize the frustration their bargaining interactions may generate and to maximize their learning experience. I finally note that instructors are not informed of the grading options selected by class members until after final letter grades have been turned in to the Records Office, and I indicate that I do not care which grading option they choose.¹²

To prevent the availability of a pass/fail option from unfairly influencing bargaining encounters, my course rules specifically prohibit students from disclosing whether they are taking the course for a grade or on a pass/fail basis—regardless of whether they are being truthful or disingenuous with respect to this factor. I established this rule many years ago, when I learned that several students had tried to gain a negotiating advantage by telling unsuspecting opponents that they were taking the class pass/fail and did not care whether they reached final accords. They would accept only terms they found acceptable. These representations intimidated risk averse opponents

¹¹ Grades of “B-” and above may not exceed 85% of class members. If grades of “A-” and above are given to 25% of students, a maximum of 60% of class members may be assigned grades of “B+,” “B,” and “B-.”

¹² Law students at George Washington University are required to select the pass/fail option by the end of the third week of classes. By this time, they will have engaged in one or two practice exercises, but none of the exercises that will influence their final course grades.

who were taking the course for a grade because they feared that nonsettlements would adversely affect their grades while having no real impact on their pass/fail adversaries. It is interesting to note that in every one of these instances, the students who said they were taking the class pass/fail were actually taking the course for a grade and merely hoped to gain a bargaining advantage over naive and fearful opponents. Had their adversaries taken the time to analyze the circumstances, they probably would have suspected deceitful conduct. If their opponents were really taking the course pass/fail, why would they be so concerned with the results they achieved on particular exercises?

During the first half of the semester, we explore theoretical and practical concepts pertaining to the negotiation process. Students are assigned chapters from *Effective Legal Negotiation and Settlement*¹³ and are encouraged to read *Getting to Yes*.¹⁴ The class considers the psychological factors that influence negotiation interactions along with the impact of verbal and nonverbal communication. Students evaluate the effectiveness of cooperative/problem-solving and competitive/adversarial bargaining styles, and I encourage them to contemplate the use of a hybrid competitive/problem-solving approach that is designed to generate beneficial client results while simultaneously maximizing the joint returns obtained by both sides. The manner in which the personal needs of clients and attorneys and the different types of legal problems and relationships may affect bargaining encounters is discussed. The class then examines the various stages of the negotiation process (Preparation Stage, Preliminary Stage, Information Stage, Distributive Stage, Closing Stage, and Cooperative Stage¹⁵) to apprise students of the primary objectives associated with each. The strengths and weaknesses of the various techniques negotiators are likely to encounter are assessed. Specific negotiating issues pertaining to such topics as the commencement of litigation settlement talks, dealing with government agencies, telephone negotiations, and the use of neutral intervenors to facilitate interparty discussions are examined next. The class explores the impact of cultural differences and gender role expectations on bargaining interactions.

The class considers the use of "attitudinal bargaining" to modify the unacceptable behavior of some opponents. Students are reminded how much excessively competitive classmates want to achieve extraordinary results and

¹³ See generally CHARLES B. CRAVER, *EFFECTIVE LEGAL NEGOTIATION AND SETTLEMENT* (3d ed. 1997).

¹⁴ See generally ROGER FISHER ET AL., *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (Bruce Patton ed., 2d ed. 1991).

¹⁵ See CRAVER, *supra* note 13, at 55-180 (discussing the stages of the negotiation process).

of the fact that if the less competitive participants are willing to accept the possible consequences of nonsettlements, those students usually can alter the offensive conduct of their competitive adversaries. Once overtly competitive individuals realize they may be forced to forego agreements if they continue to behave inappropriately, they generally conform to expected class norms.

The availability of the pass/fail option enables individuals who fear that grade anxieties may undermine their learning experiences to take the course without having to worry about their final grades. On the other hand, the right of students to take the course for a traditional grade provides individuals with the opportunity to strive for optimal performances that will enhance their grades and heighten the seriousness with which graded participants approach the simulation exercises. If all students took the class on a pass/fail basis, few would be inclined to work as hard as they would if their negotiation results affected course grades.¹⁶ The traditional grading option enables students to experience and learn to deal with the competitive pressures associated with most legal negotiations. When they graduate, usually within a year of taking the course, they will experience far greater pressure when they negotiate on behalf of clients who must live with the consequences of their bargaining interactions. Individuals who learn to cope with grade-generated anxieties should find it easier to cope with practice-related pressures once they enter the legal profession.

III. STATISTICAL FINDINGS

When we attempt to determine whether there may be a relationship between different factors, it is appropriate to establish Null and Alternative Hypotheses. The Null Hypothesis assumes the absence of any correlation, while the Alternative Hypothesis assumes that some relationship in fact exists. The relevant data then are analyzed to determine whether there appears to be a correlation between the factors being compared.

Statistical tests calculate the probability that any observed differences between compared factors are due to random considerations rather than some alternative explanation. The probability that any observed difference is due to chance is referred to as the "p-value."¹⁷ Social scientists traditionally reject the Null Hypothesis when the p-value pertaining to a discerned difference is less than 0.05, which indicates a probability of less than one in twenty that the observed difference is due to chance rather than the assumed alternative

¹⁶ See Craver, *supra* note 3, at 180.

¹⁷ See DAVID W. BARNES & JOHN M. CONLEY, *STATISTICAL EVIDENCE IN LITIGATION* § 1.13, at 33-34 (1986).

explanation.¹⁸ When, on the other hand, the probability is high that the observed difference is due to chance—a p-value of above 0.05—social scientists traditionally do not reject the Null Hypothesis.¹⁹

The logical implications of rejecting or failing to reject a Null Hypothesis are different. Refusing to reject the Null Hypothesis here means that the data provide no substantial evidence that there is any relationship between student GPAs and their performance on Legal Negotiating exercises or course papers.²⁰ When the p-value is greater than 0.05, social scientists conclude that there is no statistically significant difference between the factors being compared.²¹

In this study, rejecting a Null Hypothesis means that the data provide sufficient evidence that an alternative explanation accounts for the observed relationships between student GPAs and Legal Negotiating exercise results or course paper scores. In this case, social scientists conclude that there is a statistically significant correlation between the measured factors.²² Although it is not certain that the Alternative Hypothesis actually accounts for the measured relationship, it is reasonable to assume the presence of the observed correlation in the absence of any other possible explanation.

The first two hypotheses pertain to the possible relationship between student GPAs and student performance on Legal Negotiating exercises and on course papers. Negotiators who regularly obtain above-average results are usually well-prepared individuals who can articulate their positions forcefully. They can analyze logically the relevant factual circumstances and applicable legal doctrines to determine the most generous results they can obtain through bargaining interactions. They understand the negotiation process and the various verbal, nonverbal, and psychological factors that influence bargaining outcomes. Because students who perform well academically—evidenced by their GPAs—are generally thought to be persons who thoroughly prepare, adroitly apply pertinent legal doctrines to stated facts, and logically support their conclusions, it is reasonable to hypothesize that there will be a minimal positive correlation between student

¹⁸ See *id.* at 33 n.3.

¹⁹ See *id.*

²⁰ See *id.* at 32.

²¹ See *id.* at 33 n.3. *Statistical significance* refers to the probability that a particular statistic, such as the difference between two numbers, is due to chance rather than to an alternative explanation. See *id.* § 1.14, at 34–35. *Practical significance*, on the other hand, is not a technical term. If a numerical difference is practically significant, it is large enough to influence a rational decisionmaker. How large a numerical difference must be to “make a difference” to a decisionmaker is solely a matter of judgment for that person. See *id.*

²² See *id.* § 1.13, at 32.

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GPA's and the results they achieve on exercises and papers in my Legal Negotiating course.

The third hypothesis concerns any possible relationship between student GPA's and the decision to take the Legal Negotiating course for a traditional grade or on a pass/fail basis. Because there is no reason to assume that higher or lower GPA students are more likely to take the course on a pass/fail basis, it is reasonable to assume no relationship between student GPA's and the grading option they select.

Table 1. Hypotheses Regarding the Relationship Between Student GPA's and Performance on Legal Negotiating Course Exercises and Papers as Well as the Decision to Take the Course on a Pass/Fail Basis

HYPOTHESIS I	
Null Hypothesis	There is no correlation between student GPA's and the results achieved on Legal Negotiating course exercises.
Alternative Hypothesis	There is a positive correlation between student GPA's and the results achieved on Legal Negotiating course exercises.
HYPOTHESIS II	
Null Hypothesis	There is no correlation between student GPA's and student performance on Legal Negotiating course papers.
Alternative Hypothesis	There is a positive correlation between student GPA's and the results achieved on Legal Negotiating course papers.
HYPOTHESIS III	
Null Hypothesis	There is no correlation between student GPA's and the decision to take Legal Negotiating for a traditional grade or on a pass/fail basis.
Alternative Hypothesis	There is a correlation between student GPA's and the decision to take Legal Negotiating for a traditional grade or on a pass/fail basis.

Because the first two hypotheses compare student GPA's with Legal Negotiating class performance, I will evaluate those possible relationships first. To test these two hypotheses, Spearman rank-order coefficients (R_s) were calculated for each of the thirteen years I have taught Legal Negotiating

at George Washington University.²³ The first Rs column compares student GPAs with negotiation exercise results; the second Rs column compares student GPAs with course paper scores; and the third Rs column provides the Rs coefficients needed for a statistically significant correlation (positive (+) or negative (-)) for the stated sample sizes (N) at the 0.05 level of significance. Because both Alternative Hypotheses are based on the premise that if correlations between student GPAs and negotiation exercise results or course paper scores are discerned, they would be positive rather than negative, I have used one-tailed—rather than two-tailed—probability values.²⁴ The results are set forth in Table 2.

Table 2. Spearman Rank Order Coefficients Comparing Student GPAs with Negotiation Exercise Results and Course Paper Scores

Semester	N	Rs Negotiation Exercises	Rs Paper Scores	Rs 0.05 Level of Significance ²⁵
Fall 1986	45	+0.213	+0.217	0.248
Spring 1988	55	+0.212	+0.007	0.224
Spring 1989	58	+0.072	+0.002	0.218
Spring 1990	58	-0.206	-0.047	0.218
Spring 1991	61	-0.021	+0.153	0.213
Spring 1992	48	+0.120	+0.005	0.240
Fall 1992	59	+0.169	+0.164	0.216
Fall 1993	59	-0.034	+0.075	0.216
Fall 1994	62	-0.106	+0.060	0.211
Fall 1995	56	+0.002	-0.047	0.222
Fall 1996	51	-0.093	+0.346	0.233
Fall 1997	40	-0.052	-0.114	0.264
Fall 1998	46	+0.027	-0.062	0.246

²³ See *id.* § 7.11, at 366–67 (explaining that the Spearman rank correlation coefficient “is a measure of the degree of association between the ranks of observations on two ordinal lists” and that “[i]f the observations are ranked identically on the two lists, the ranks are said to be perfectly positively correlated and the Spearman rank correlation coefficient is +1.” If the observations or the two lists appear in “precisely the reverse order of their rank on the other list, the correlation between the ranks is -1.”); see also W.J. CONOVER, PRACTICAL NONPARAMETRIC STATISTICS 175, 316–17 (3d ed. 1999).

²⁴ See BARNES & CONLEY, *supra* note 17, § 6.22.1–2, at 305–19 (explaining the use of one-tailed versus that of two-tailed probability tests); CONOVER, *supra* note 23, at 317–18 (same).

²⁵ The Spearman Rs Coefficients for the 0.05 level of significance were obtained from Jerrold H. Zar, *Significance Testing of the Spearman Rank Correlation Coefficient*, 67 AM. STAT. ASS’N NEWS 578, 579 tbl.2 (1972).

The Spearman rank order coefficients comparing student GPAs with negotiation exercise results were slightly positive for seven of the thirteen years and slightly negative for the other six years. There is not a single year, however, for which the Spearman coefficient established a correlation at the 0.05 level of significance. These findings warrant rejection of the Alternative Hypothesis suggesting a possible positive correlation between student GPAs and negotiation exercise performance and acceptance of the Null Hypothesis suggesting the absence of any such correlation.

One possible explanation for the unanticipated absence of any statistically significant correlation between law school grades and negotiation exercise results might involve the relatively homogeneous nature of law school matriculants. Typical students at George Washington University Law School have undergraduate grade point averages in excess of 3.5 on a 4.0 scale and LSAT scores above the 90th percentile. If the academic capabilities of the students in my Legal Negotiating class were relatively indistinguishable, one might expect to find no meaningful differences between negotiation exercise results and overall law school performance. However, this explanation cannot be sustained. Professors teaching traditional law school courses generally have found that examinations normally generate an expansive range of student responses that permit reasonable demarcations among the various class members. Few would suggest that student homogeneity has precluded the drawing of meaningful distinctions with respect to performance in regular courses. There is no reason to suspect that student homogeneity would account for the absence of any perceived correlation between student GPAs and negotiation exercise results.

What else might account for the absence of any perceived correlation between student GPAs and negotiation exercise results? A critical factor might be the different capabilities being measured by traditional law school examinations and by simulation exercises. Students who perform well on examinations generally possess high abstract reasoning skills. They are able to memorize legal doctrines and know how to apply those principles to hypothetical fact patterns in an abstract manner. Good negotiators, on the other hand, possess good interpersonal skills. They know how to “read” other people and persuade those persons to give them what they prefer to have. These personal attributes concern what Daniel Goleman has characterized as “emotional intelligence.”²⁶

There does not appear to be any correlation between abstract reasoning skills—most often measured by IQ tests—and emotional intelligence. While a few gifted individuals may possess both capabilities, most people are

²⁶ See generally DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* (1995).

fortunate if they have an abundance of either. As a result, there is no reason to suspect that students who have the high abstract reasoning skills needed to achieve elevated GPAs would be among the finite number of persons who also possess the enhanced emotional intelligence that would be most relevant with respect to performance on negotiation exercises.

It is also interesting to note the absence of any statistically significant correlation between student GPAs and course paper scores. Slight positive Spearman coefficients were obtained for nine of the thirteen years, with slight negative coefficients being found for the other four years.²⁷ For three of the years for which positive coefficients were obtained—1988, 1989, and spring of 1992—the coefficients were below 0.01.²⁸ The year 1996 was the sole year for which a coefficient was found that was statistically significant at the 0.05 level.²⁹ These findings would warrant rejection of the Alternative Hypothesis suggesting a positive correlation between student GPAs and course paper scores and acceptance of the Null Hypothesis suggesting the absence of any such correlation.

Some observers might be more surprised by the absence of any observable relationship between student GPAs and course paper scores than they were with respect to the results obtained comparing student GPAs with negotiation exercise performance. While they may appreciate the difference between the abstract reasoning skills that contribute to success on traditional law school examinations and the emotional intelligence relevant to successful negotiation performance, they might reasonably wonder why the same abstract reasoning capabilities measured by student GPAs are not relevant to the preparation of course papers.

Several factors may account for the absence of any perceived correlation between student GPAs and course paper scores. First, my Legal Negotiating course papers are not like conventional seminar papers. I do not require students to engage in scholarly research. I instead require them to analyze their negotiation exercise experiences in light of the various concepts we have explored throughout the term. While I do require the use of analytical skills, much of what students write concerns interpersonal capabilities or the lack thereof. They are forced to evaluate their bargaining interactions with fellow students in an effort to appreciate the factors that may have accounted for the results they have achieved on their exercises. More of their analysis focuses on emotional intelligence factors than on abstract reasoning capabilities.

²⁷ See *supra* tbl.2.

²⁸ See *supra* tbl.2.

²⁹ See *supra* tbl.2.

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A second factor also may diminish the likelihood of any relationship between student GPAs and course paper scores. By the time students prepare their papers, they usually have completed the five negotiation exercises that will affect their course grades. As soon as the last exercise is finished, I inform class members of the number of individuals with total negotiation scores between ten and twenty, twenty and thirty, thirty and forty, forty and fifty, fifty and sixty, and over sixty. They thus have a good idea where they stand vis-a-vis their classmates. They know that a maximum of twenty-five percent will obtain grades of "A-" and above, and they realize that about sixty percent will get grades of "B+," "B," and "B-."³⁰

I specifically inform students that I do not curve course paper scores. If many students prepare good papers, they all receive similar paper scores. As a result, many students may conclude that it is not worth the extra effort needed to prepare truly outstanding papers because those efforts are unlikely to elevate significantly their final course grades. They thus decide to expend the effort needed to prepare acceptable papers that will prevent them from allowing students with lower overall negotiation exercise scores to achieve higher course grades.

The students with the greatest motivation to prepare outstanding papers are the individuals who have achieved exceptionally high negotiation exercise results. They know that elevated paper scores will preserve their "A" or "A-" grades. Because there is no discernible correlation between student GPAs and negotiation exercise results, one is similarly likely to find no relationship between student GPAs and course paper scores.

The third hypothesis concerns the relationship between student GPAs and the grading option they select in my Legal Negotiating course. Table 3 sets forth the mean GPAs for graded and pass/fail students³¹ and the difference between those means. A "t-test"³² was performed to determine whether there is a statistically significant difference between the means of graded and pass/fail students, with the probability (p-value) of the observed mean differences being the result of random chance being recorded in the last column. Because there was no reason to suspect that higher or lower GPA

³⁰ See *supra* note 11 and accompanying text.

³¹ From 1986 through 1992, George Washington University law students were graded on a 100 point system, with "A" being 85 and above, "B" being 75 to 84, "C" being 65 to 74, "D" being 55 to 64, and "F" being below 55. Since the fall of 1992, George Washington University law students have been graded on a letter basis, with both plus and minus grades being used.

³² See BARNES & CONLEY, *supra* note 17, § 7.22, at 389-90 (explaining the use and application of the "t-test"); CONOVER, *supra* note 23, at 283-84 (same).

students would be more likely to take the course on a graded or a pass/fail basis, two-tailed probability scores have been used.³³

Table 3. t-Test Comparison of Student GPAs and Student Election to Take Legal Negotiating on a Graded or Pass/Fail Basis

Semester	N	Mean GPA of Graded Students	Mean GPA of Pass/Fail Students	Mean Difference	P-Value
Fall 1986	45	78.2	81.5	+3.30	0.18
Spring 1988	55	77.9	81.4	+3.50	0.00
Spring 1989	58	78.8	79.9	+1.10	0.33
Spring 1990	58	78.0	80.4	+2.40	0.03
Spring 1991	61	77.5	79.9	+2.40	0.01
Spring 1992	48	76.6	80.4	+3.80	0.00
Fall 1992	59	2.86	3.29	+0.43	0.00
Fall 1993	59	2.87	3.17	+0.31	0.01
Fall 1994	62	3.15	3.07	-0.08	0.64
Fall 1995	56	2.88	3.23	+0.35	0.00
Fall 1996	51	3.10	3.39	+0.29	0.01
Fall 1997	40	3.01	3.20	+0.19	0.08
Fall 1998	46	2.96	3.24	+0.29	0.01

The t-test calculations established statistically significant differences between the mean GPAs of pass/fail and graded students for nine of the thirteen years at the 0.05 level.³⁴ These findings would warrant rejection of the Null Hypothesis suggesting no correlation between student GPAs and the grading option they select and acceptance of the Alternative Hypothesis suggesting the existence of a correlation between student GPAs and the grading option they choose, with higher GPA students being more likely to take the class on a pass/fail basis than lower GPA students.

Even the years for which no individually significant mean differences were discerned lend support to the Alternative Hypothesis that higher GPA students are more likely to take the course on a pass/fail basis than lower GPA students. For twelve of the thirteen years, students who took the course on a pass/fail basis had higher mean GPAs than students who took the class on a graded basis.³⁵ The only year for which graded students had a higher GPA mean than pass/fail students was 1994, and the difference was an

³³ See BARNES & CONLEY, *supra* note 17, § 6.22.1–2, at 305–19; CONOVER, *supra* note 23, at 317–18.

³⁴ These nine years were the following: 1988, 1990, 1991, Spring 1992, Fall 1992, 1993, 1995, 1996, and 1998. See *supra* tbl.3.

³⁵ See *supra* tbl.3.

insignificant 0.08.³⁶ A binomial test may be used to calculate the probability of having no more than one year of higher GPA mean for graded students than pass/fail students if lower GPA students were as likely as higher GPA students to take the class on a pass/fail basis.³⁷ For the thirteen year period covered, the probability is 0.0001, or 0.01%.³⁸ This lends additional support for the proposition that higher GPA students are more likely to take the class on a pass/fail basis than lower GPA students.

Why would higher GPA students be more likely to take my Legal Negotiating course on a pass/fail basis than lower GPA students? The answer is rather obvious when one considers the situation from a detached perspective. Higher GPA students have more to lose from a graded negotiation course than their lower GPA cohorts. Only twenty-five percent of class members are going to receive grades of "A-" and above, while about sixty percent will receive grades of "B+," "B," and "B-." Higher GPA students realize that—unlike traditional law school courses in which final grades are based primarily on individual examination performance—Legal Negotiating class grades will be influenced significantly by their interactions with partners and opponents. If higher GPA students evaluate their grading options on a rational basis, they appreciate the fact that they would be likely to achieve Legal Negotiating course grades below their present GPAs. They thus are induced to elect the pass/fail option. Lower GPA students, on the other hand, recognize the fact that they are likely to obtain Legal Negotiating grades above their current GPAs, inducing them to take the course on a graded basis.

IV. IMPLICATIONS

The findings obtained in this Study lend support to three statistically significant hypotheses, as follows: (1) the absence of any meaningful correlation between student GPAs and negotiation exercise performance; (2) the absence of any meaningful correlation between student GPAs and Legal Negotiating course paper scores; and (3) the presence of a statistically significant correlation between student GPAs and the grading option they select in my Legal Negotiating course, with higher GPA students being more likely than lower GPA students to take the class on a pass/fail basis.

It would be beneficial for Legal Negotiating teachers at other law schools who use bargaining exercises in their courses to engage in similar research to

³⁶ See *supra* tbl.3.

³⁷ See BARNES & CONLEY, *supra* note 17, § 4.15, at 147–51 (explaining the binomial test); CONOVER, *supra* note 23, at 124–33 (same).

³⁸ See *supra* tbl.3.

determine if they also would find no correlation between student GPAs and exercise or paper performance. It also would be informative if teachers of other clinical skills courses, such as client counseling and trial practice, would compare the practical performances observed in their respective classes with student GPAs. If they were to find a similar absence of any relationship between student GPAs and clinical course performance, this would support further the conclusion that traditional academic performance and clinical course performance are unrelated.

If there is no correlation between overall law school performance, based upon student GPAs, and one's ability to achieve beneficial results in clinical negotiation setting, and other clinical class situations, law firms might wish to reconsider the degree of reliance they place upon student class standing during the hiring process. Because the capacity of practicing attorneys to counsel clients, to negotiate, and to engage in litigation is crucial to their ability to be effective legal counselors, hiring committees might want to place greater emphasis on the performance demonstrated by applicants in clinical courses than in more traditional courses. They should review student transcripts carefully to determine which applicants have demonstrated the ability to achieve successful results in clinical courses and give more thorough consideration to those individuals.

The findings with respect to the third hypothesis—suggesting a statistically significant correlation between student GPAs and whether they opt to take Legal Negotiating on a graded or a pass/fail basis—are more relevant to clinical course instructors. Many law schools permit clinical course students to take those offerings only on a graded basis. If the final grades in those classes are based substantially on student performance on simulation exercises pertaining to negotiating, client counseling, or trial advocacy, higher GPA students who are required to take those classes for conventional grades might be hesitant to take those important courses. They rationally would fear that their final grades would be more affected by the actions of other students than would be true with respect to regular examination classes. I would encourage skills teachers to seek to offer their courses on either a total pass/fail basis or with an option for students to take those classes on a credit/no-credit basis. This would encourage risk averse students with higher GPAs who might be afraid to take such clinical classes on a graded basis to take these courses on a pass/fail basis.

I thus believe that it is important, at a minimum, to give students the option to take clinical skills courses on a pass/fail basis. Because I previously found that pass/fail students tend to perform less well on clinical negotiation exercises than graded students,³⁹ I would prefer to provide students with the

³⁹ See generally Craver, *supra* note 3.

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right to take these courses on a graded or a pass/fail basis rather than on an exclusively credit/no-credit basis. The graded students would work diligently to earn beneficial grades, and their actions in this regard would encourage their credit/no-credit classmates to work harder to avoid the embarrassment associated with substandard performance.

V. CONCLUSION

The empirical evidence evaluated by me indicates the absence of any statistically significant correlation between student GPAs and student performance on either Legal Negotiating class exercises or course papers. This most likely is based on the fact that the abstract reasoning skills associated with examination performance are different from the interpersonal skills associated with negotiation success. This finding might suggest that clinical course performance is a more reliable predictor of future legal practice success than performance in traditional law school courses. I have also determined that higher GPA students are more likely to take my Legal Negotiating class on a pass/fail basis than their lower GPA cohorts. This is probably due to the fact that higher GPA students recognize that they have less control over their course grades in a skills class requiring them to interact directly with other class members than they have in traditional examination courses. The availability of a pass/fail option thus encourages risk averse higher GPA students to take clinical skills courses they might not take if they could do so only on a graded basis.

